

ADMINISTRATIVE-INTERNAL USE ONLY

Date: 01/20/93 (Regulations may contain various dates)

Category: [REDACTED] Management

OPR: EXDIR

Title: [REDACTED] GRIEVANCE RESOLUTION

[REDACTED]

6. GRIEVANCE RESOLUTION

SYNOPSIS. This regulation sets forth the basic rules applicable to the presentation and handling of grievances.

- a. **POLICY.** This regulation is applicable to grievances filed after 20 January 1993. The Agency undertakes to create conditions of employment and a working environment conducive to effective accomplishment of the Agency's mission and employees' job satisfaction. In furtherance of these goals, it is Agency policy that employees have the opportunity to seek resolution of job-related grievances free from restraint, coercion, or reprisal and that the Agency provide for the prompt, competent, and just consideration of such grievances. Insofar as possible, the resolution of grievances will be accomplished informally by line managers and at the lowest appropriate level. Nothing in this regulation is intended to delay or preclude the separation of an Agency employee in accordance with HR [REDACTED]

b. DEFINITIONS

- (1) A "grievance," subject to the limitations in paragraph (2) immediately below, is a formal written request by an employee for remedial action concerning work-related disputes, including career problems, management action, working conditions, or other matters that affect the employee and that are subject to control by Agency management. On appeal, the Inspector General (IG) is authorized to make a finding regarding whether a matter constitutes a grievance under this regulation. A grievance raises no presumption of improper action or wrongdoing by any party to the grievance.

(2) Grievances will not include:

- (a) Claims of illegal discrimination as set forth in HR [REDACTED] or HR [REDACTED] (sexual

harassment);

- (b) The content of published Agency-wide policy;
 - (c) Any judgment of a personnel evaluation board or panel in ranking or selecting employees for promotion or assignment on the basis of merit, unless the grievant can demonstrate with clear and convincing evidence that the record under consideration was significantly deficient or that the process was not carried out as set forth in HR [REDACTED] and AR [REDACTED];
 - (d) Any denial or recommended denial by an Agency panel or board of an employee claim, as set forth in HR [REDACTED], HR [REDACTED], and HR [REDACTED];
 - (e) Any recommendation of an Employee Review Panel or a Personnel Evaluation Board for disciplinary actions or termination, as set forth in HR [REDACTED] and HR [REDACTED];
 - (f) Any nonadoption of an employee suggestion, as set forth in HR [REDACTED];
 - (g) Any disapproval of an honorary or discretionary award, as set forth in HR [REDACTED];
 - (h) Any recommendation of the CIA Retirement Board as set forth in HR [REDACTED]; or
 - (i) Any other matter, such as performance appraisal as set forth in HR [REDACTED], for which a channel other than the Grievance System has been established by statute or regulation for adjudication and appeal. Employees should be alert to the differences in the processes contained in these other regulations, including differing time limits.
- (3) "Directorates" in this regulation are the Directorate of Administration, the Directorate of Intelligence, the Directorate of Operations, the Directorate of Science and Technology, and the DCI Area and "Deputy Directors" are the Heads of the directorates and a designated member of the E Career Service Board other than its Head.
- (4) An "employee" for the purpose of this regulation is a U.S. citizen who is a current or former staff or contract employee or, to the extent that the matter being grieved falls under the Agency's jurisdiction, an individual on detail to the Agency. Neither [REDACTED] appointed under the authority of the DCI to serve as nonstaff employees of the U.S. Government nor other nonappointed employees to the Federal service (including independent contractors and nonstaff [REDACTED]) come under the provisions of this regulation. Grievances from such [REDACTED] will be

handled within the chain of command of the headquarters components charged with responsibility for managing the activities with which the grievants are associated. The highest level of appeal for such grievances will be the head of the headquarters component, for example, the chief of an area division of the Directorate of Operations, the [REDACTED], or the Director of Communications.

(5) The title of "grievance officer" is reserved for the officer in each directorate whose primary duty is being responsible for the directorate's or service's grievance system and all its related aspects, such as conducting inquiries, counseling, educating, and keeping official records. No other Agency officer will carry the title of grievance officer, but those supporting the grievance officer may be designated with related titles such as "grievance counselor."

(6) The "parties to the grievance" are the grievant and those Agency employees who are the subject of the grievance.

c. **PROCESS.** Within 90 calendar days after learning that a harmful action has taken place, an employee must seek an informal resolution within the appropriate component and, if that is unsuccessful before the end of the 90-day period, exercise the option to file a formal grievance. For example, if an employee discovers today that a memorandum with incorrect and possibly damaging information was put into his or her personnel file two months ago, the employee has 90 calendar days from today--the date he or she first becomes aware that something harmful has occurred--to attempt an informal resolution within the component, and if no agreement can be reached, to file a formal grievance. Both the informal attempt to resolve the problem and the filing of a formal grievance must be completed in the same 90-calendar-day period.

(1) **INFORMAL RESOLUTION.** Employees are expected first to seek resolution of work-related disputes informally within their components through consultations with their supervisors and other component and directorate officials in accordance with the component's procedures for dispute resolution. When work-related disputes concern matters under the jurisdiction of components in other directorates of the Agency, employees may consult responsible officials in those components.

(2) FORMAL RESOLUTION

(a) **General.** An employee who is dissatisfied with a component's informal attempts to resolve a work-related dispute may, within 90 calendar days of the date the grievant first becomes aware of the action giving rise to the grievance, submit a formal grievance in writing, using Form 4437, Official Grievance Package (see paragraph d(7) below), to a manager in the employee's component chain of command in accordance with the component's grievance procedures. This submission must provide sufficient details to make clear the nature and basis of the grievance, the individuals against whom it is brought, and the specific relief

requested. Failure of the grievant to file a written grievance within the 90-calendar-day period, even if the informal resolution has not been completed, eliminates the right of the employee to pursue the grievance. An employee may file a grievance initially at any of the three levels in the process: the employee's component management, the directorate grievance officer, or the Deputy IG for Investigations. Unless unusual circumstances warrant otherwise, the recipient will, within 15 days, refer the grievance for resolution to the lowest possible level.

- (b) **Component.** An employee who chooses to file a formal grievance at the component level shall do so in accordance with the component's established grievance procedures. Within 60 calendar days of receiving a written grievance, unless extended by agreement of the parties to the grievance and the head of the component, officials in the component will review the grievance, gather and record all relevant information, and provide the grievant with a written report, signed by the component head, including findings, conclusions, and decisions concerning resolution of the grievance. Should the component not reach a decision within this 60-calendar-day period or should the component's response not satisfy a party to the grievance, any of the parties may appeal the case in writing through the grievance officer to the Deputy Director responsible for the component within 15 days of receipt of the response or expiration of the time period.
- (c) **Directorate.** Within 15 calendar days of receiving an appeal to the Deputy Director or accepting a grievance directly, unless extended by agreement of the grievance officer and the appealing party, the grievance officer will review the written record of the grievance and decide whether to (1) recommend accepting the component's decision, if one was made, (2) remand the matter to the component for further information or action within a specified time limit, or (3) conduct a separate inquiry within a reasonable time limit specified by the grievance officer. If the grievance officer cannot resolve the matter without the Deputy Director's involvement, the grievance officer will provide the Deputy Director a written report of his or her findings and conclusions with recommendations for a final directorate decision. The grievance officer will inform the parties to the grievance in writing of the Deputy Director's decision. Should the decision not satisfy any party to the grievance or should the Deputy Director fail to reach a decision within 20 calendar days of receiving the grievance officer's recommendation, any party may appeal the matter to the Executive Director (EXDIR) in writing within 15 days of receipt of the response or expiration of the time period.
- (d) **Executive Director.** Within 15 calendar days of receiving an appeal to the EXDIR or accepting a grievance directly, unless extended by agreement of the Deputy IG for Investigations and the appealing party, the Deputy IG for Investigations will review the written record of the grievance and decide whether to (1) recommend accepting the Deputy Director's decision, if one was made, (2)

remand the case to the grievance officer for further information or action within a specified time limit, or (3) conduct an investigation within a reasonable time limit specified by the Deputy IG for Investigations. If the Deputy IG for Investigations cannot resolve the matter with the Deputy Director and without the EXDIR's involvement, the Deputy IG for Investigations will provide the IG with a written report of the investigative findings and conclusions with recommendations for the IG's submission to the EXDIR. Within 30 calendar days of receiving the IG's recommendations, the EXDIR will decide whether to (1) accept the IG's recommendations, (2) remand the case to the IG for further information or action within a specified time limit, or (3) impose a different decision. A decision by the EXDIR concerning resolution of the grievance is a final Agency determination and may not be reviewed or appealed further. The Deputy IG for Investigations will inform the parties to the grievance in writing of the EXDIR's decision.

d. IMPLEMENTATION PROVISIONS

- (1) **Privacy Channels.** To ensure that employees serving overseas or at field sites in the United States have full, unimpeded access to the grievance system, the Office of Communications will maintain privacy channels for the communication of grievance-related messages to any of the directorate grievance officers and to the IG. Access to this channel will be limited to parties to the grievance, the grievance officers, and designated employees of the Office of IG.
- (2) **Interviews.** The parties to the grievance will be interviewed at the first grievance resolution level. At each subsequent level of the process, except at the level of the EXDIR's review of IG recommendations, the appealing party will be interviewed. Other interviews shall be conducted as the official responsible for the investigation deems appropriate.
- (3) **Facilitator.** A grievant, with the approval of the grievance officer in the directorate in which the grievance is filed, may select an Agency staff employee who agrees to assist the parties to resolve the grievance. The grievance officer may disqualify this facilitator of a grievance because of a conflict of interest or position, conflict with the needs of the Agency, or unreasonable cost. The grievant may appeal such disqualification to the IG, whose decision is final.
- (4) **Third-Party Assistance.** At any point in the grievance process the parties to the grievance may, by mutual agreement and consistent with the protection of Agency sources and methods, enlist from within or outside the Agency a properly cleared third party to assist in resolving the dispute through counseling, mediation, negotiation, arbitration, or some alternative method of dispute resolution.
- (5) **Records.** The responsible officer at each level of the grievance process (Head of component, directorate grievance officer, and Deputy IG for Investigations) will ensure that formal records are maintained including all materials, reports, and

information relating to the processing of a grievance in accordance with the Agency-wide system of recordkeeping for grievance files developed by the Agency Information Management Officer. When a grievance is appealed, the next level will take immediate possession of all written records relating to the grievance.

- (6) **Access to Grievance Files.** The parties to the grievance and the facilitator of a grievance are entitled to read and review the substance of all written records relating to the grievance, at a time determined to be appropriate to the matter by the official responsible for the investigation. In those extraordinary situations in which a grant of confidentiality is required, the identification of the source will be protected from disclosure to the parties and the facilitator. However, such grants of confidentiality will not preclude disclosures required or permitted by provisions of applicable law.
- (7) **Form 4437, Official Grievance Package.** This form is composed of a cover sheet, grievance routing sheet, and component grievance record. The grievance routing sheet as part of the Official Grievance Package accompanies the component grievance record throughout the process and is annotated with the dates the grievance is initially submitted and passed from one level to the next. These dates will constitute the official basis for determining the various time periods provided in this regulation. Form 4437 may be obtained from Agency supply rooms, directorate grievance officers, and the Office of Inspector General.
- (8) **Expiration of Time Limits.** Failure of an individual to file a grievance or to appeal it to a higher level within the time limits provided in this regulation eliminates the individual's right under this regulation to pursue that grievance. At any point in the grievance process, the parties to the grievance and the official responsible for the investigation may, by mutual agreement, extend the time limit, or any of the parties to the grievance may appeal to the IG for an extension of time. Any party to a grievance who has lost the right to appeal a grievance may, based on exceptional cause, appeal the expiration of the appeal time limit to the next level deciding authority. Any extensions of time for further investigation, based on exceptional causes, will be made only by the Deputy Director concerned or the IG.
- (9) **Remand.** When a grievance is remanded to a lower level for further information or action, the officer making that decision will determine a reasonable time for delivery of the additional information or completion of the action.
- (10) **Resolution.** If at any stage of the formal grievance process the grievant is satisfied with a resolution, he or she will execute a written statement to that effect, thereby closing the matter. The employee may reopen the matter only by presenting new evidence that was not previously discoverable by the employee in the exercise of due diligence and that materially affects the basis for resolution, or by presenting evidence of noncompliance with a previous determination or of reprisal for pursuing resolution of a grievance.

e. RESPONSIBILITIES

- (1) Employees must make reasonable efforts to resolve disputes informally. Employees who use the formal grievance system must do so in compliance with the procedures and time limits provided by this regulation and by the component and directorate dispute-resolution and grievance procedures, and must not press frivolous, capricious, or harassing complaints. Employees have the initial responsibility to present the facts and circumstances that they believe support their grievances and to articulate clearly the relief sought.
- (2) Supervisors are expected to address work-related disputes in a timely, fair, and effective manner and to cooperate fully in the resolution of grievances.
- (3) Upon request, grievance officers will provide staff support and advice on all grievances within their directorate to their Deputy Directors, component supervisors, and employees. Grievance officers will counsel employees and handle grievances with the goal of achieving prompt, equitable resolution of problems as informally as possible. Grievance officers will provide grievance resolution oversight and guidance throughout their directorate and are responsible for developing thorough reports and objective recommendations designed to resolve disputes without bias toward employees or managers.
- (4) Deputy Directors will establish directorate grievance procedures consonant with the provisions of this regulation. Those procedures should offer the parties to the grievance a choice of options for resolving a dispute. Deputy Directors also are responsible for ensuring timely, fair, and effective resolution of grievances brought to them by the grievance officers and ensuring that grievance officers are in a position to perform their functions properly.
- (5) Acting for the EXDIR, the IG will be the overseer of the Agency-wide grievance and dispute resolution system and will be responsible for ensuring that decisions are implemented properly and for conducting grievance resolution training and certification for personnel throughout the Agency.
- (6) The EXDIR is the final deciding official for the Agency on all grievances pursuant to this regulation.

f. PENALTIES

- (1) **For Reprisal.** Any employee who inflicts any form of reprisal on another employee for pursuing resolution of work-related issues, or for discussing, planning to file, filing, or pursuing a grievance is subject to administrative action as Agency management may deem appropriate, to include oral warning, letters of reprimand, suspension without pay, and, in the most extreme cases, termination of employment.

- (2) **For Abusing the Grievance System.** Any employee who files frivolous, capricious, or harassing complaints may be subject to administrative action as Agency management may deem appropriate, to include oral warnings, letters of reprimand, suspension without pay, and in the most extreme cases, termination of employment.
- (3) **Failure to Implement Agreed Decisions.** Any employee who fails to implement an agreed resolution of a grievance within a reasonable time may be subject to administrative action as Agency management may deem appropriate.
- (4) Requests for suspension or termination because of reprisal or abuse of the grievance system will be prepared in accordance with HR [REDACTED] and forwarded to the Director of Personnel, with all pertinent documents attached.

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Acting Director Central Intelligence